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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1467

ITT LAMP DIVISION OF THE INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,
PETITIONER,

v.

STEPHEN A. MINTER, COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Opinions Below

The opinion of the court of appeals (Pet. A1) is reported at 435 F.2d 989. The opinion of the district court (Pet. A12) is reported at 318 F.Supp. 364.

Jurisdiction

The judgment of the court of appeals was entered on December 14, 1970. The petition for writ of certiorari was filed on March 15, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether the court of appeals, in affirming the district court's interlocutory order denying injunctive relief to petitioner, erred in ruling that petitioner had not demonstrated sufficient probability of prevailing on the merits, i.e., that a significant frustration of federal collective bargaining policy was effected by the granting of welfare benefits to indigent strikers by the Commonwealth or that, even so, the state interest was so insubstantial compared to the federal interest that Congress must be supposed to have preempted the state from serving that interest.

Constitutional Provision Involved

Article VI of the United States Constitution is set forth in the Petition at A15.

Statutes Involved

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 141 et seq.), the Social Security Act of 1935, 49 Stat. 620, as amended (42 U.S.C. §§ 301-1394), and the Massachusetts General Welfare and Aid to Families with Dependent Children Acts (Mass. G.L. c. 117 and 118) are set forth in the Petition at A15-A28.

Statement of the Case

On August 24, 1970, petitioner's plant at Lynn, Massachusetts, which employed approximately 825 employees,

was struck by 660 employees represented by Truck Drivers, Chauffeurs, Helpers Local No. 42, after several months of unsuccessful negotiations respecting an initial collective bargaining agreement. Thereafter, approximately 175 striking employees applied for welfare benefits under the Massachusetts General Welfare and Aid to Families with Dependent Children Acts. Mass. G.L. c. 117, 118.

The petitioner brought suit in the district court, seeking temporary and permanent injunctive relief to enjoin the payment of any welfare benefits to its striking employees and their families. Petitioner's motion for a temporary restraining order was denied by the district court, and the court of appeals affirmed, although the court noted that the strike against petitioner had subsequently been settled.

Argument

First of all, since the strike against petitioner has been settled (Pet. A2), no actual matters in controversy essential to the decision of the case are before this Court. Accordingly, this case falls within the long-established rule that this Court does not sit to give opinions upon moot questions or abstract propositions. *Oil Workers Unions* v. *Missouri,* 361 U.S. 363, 367. *Bus Employees* v. *Wisconsin Board,* 340 U.S. 416, 418. Similarly, the petition ignores a corollary rule that the Court will not pass upon an issue where the case has not been fully tried, unless the ruling is "fundamental to the further conduct of the case." *Gillespie* v. *U. S. Steel Corp.,* 379 U.S. 148, 153-154. This rule particularly applies to a petition for writ of certiorari seeking to review a decree of a circuit court of appeals on appeal from an interlocutory order, *American Construction Co.* v. *Jacksonville, T. & K. W. R. Co.,* 148 U.S. 372, 384, which includes of course the denial of a preliminary injunction.[1]

[1] The denial of the motion for a temporary restraining order was considered by the court of appeals to have the effect of a denial of an injunction (Pet. A2, fn. 2).

Myers v. *Bethlehem Shipbuilding Corporation,* 303 U.S. 41, 52. In short, the petition requests this Court to make an unnecessary ruling upon an interlocutory order in a case now clearly moot.

Secondly, since the Court decides questions of public importance only in the context of meaningful litigation, the resolution of an issue posed in a petition should be deferred where the decision below can be sustained on an independent or alternative ground. See *The Monrosa* v. *Carbon Black, Inc.,* 359 U.S. 180, 184. In the court of appeals, the petitioner was under the heavy burden of showing a clear error of law or abuse of discretion by the district court in its refusal to find that injunctive relief was justified. *Automatic Radio Mfg. Co.* v. *Ford Motor Co.,* 390 F.2d 113, 115-116 (1st Cir. 1968), *cert. denied,* 391 U.S. 914. Since the award of an interlocutory injunction is not a matter of right but of sound judicial discretion, the district court was obliged to balance the conveniences and possible injuries to the parties. *Yakus* v. *United States,* 321 U.S. 414, 440. On the one hand, the district court found that there was no evidence to show to what extent the receipt of welfare benefits would affect the continuance of the strike. (Pet. A14). The court of appeals reached the same conclusion. (Pet. A3, fn. 3). On the other hand, the district court found that the granting of the order would harm the respondent and the state by interfering with the public interest in providing needy relief for the destitute, and would inflict serious harm on needy applicants and their families. (Pet. A14). The "state's legitimate interests" were also recognized by the court of appeals. (Pet. A7). Under these circumstances, it lay well within the district court's discretion to withhold relief which would adversely affect a pulbic interest until a final determination of the rights of the parties. *Ibid.* Since there is no clear showing of an improvident exercise of judicial discretion, the judg-

ment below must stand on this ground. See *Myers* v. *Bethlehem Shipbuilding Corporation, supra* at 52.

Lastly, the petition presents no substantial question warranting further review by this Court. There is no conflict between circuits, as petitioner implicitly admits (Pet. 4), and the decision below—which is based on a careful analysis of the facts and the questions of law presented—is correct. The issue whether such welfare assistance was federally preempted by the National Labor Relations Act did not even arguably fall within the preemption zone delineated by *San Diego Building Trades* v. *Garmon*, 359 U.S. 236, its ancestors and progeny, since those decisions were concerned with the specific subject matter of sections 7 and 8 of the Act (the protection of concerted activities and the proscription of unfair labor practices, both under NLRB jurisdiction), plainly inapplicable here (Pet. A5). Accordingly, petitioner's citation of *dicta* from these authorities is inapposite. Since the asserted conflict involved only a "tangential frustration" of unfettered collective bargaining, the court of appeals properly undertook a balancing process, assessing the degree of conflict and relative importance of state and federal interests, noting that in the absence of a clear manifestation by Congress, the exercise of a state's historic police powers could not be invalidated under the Supremacy Clause in the absence of persuasive reasons, or unless the administration of state law palpably infringed upon federal policy (Pet. A5-A6). After such a detailed assessment (Pet. A6-A8),[2] the court of appeals reached the only possible conclusion—substantial doubt that a significant frustration of federal collective bargaining policy was effected by the granting of welfare benefits to indigent strikers, wholly apart from the inadequacy of the evidence before the district court (Pet. A8.)

[2] The court of appeals indicated that the appropriate forum for resolving this issue was Congress (Pet. A8).

The petition also ignores a second and independent ground for the decision below—substantial doubt that the state interest was so insubstantial compared to the federal interest that Congress must be supposed to have deprived the state of such power to serve that interest (Pet. A8). Clearly, the state's interests "in minimizing hardship to families of strikers who have no other resources than the weekly pay check, its concern in avoiding conditions that could lead to violence, [and] its interest in forestalling economic stagnation in local communities" (Pet. A7), *inter alia,* must weight heavily in the balance. Even under *Garmon,* a state can act where there exists a deeply rooted local responsibility, *id.* at 243-244, or an overriding state interest. *Linn* v. *Plant Guard Workers,* 383 U.S. 53, 61. In view of the vital interests of the applicants (see *Goldberg* v. *Kelly,* 397 U.S. 254, 264), the court of appeals was not bound to accept petitioner's argument below that it had a right to starve striking employees and their families pending a hearing on the merits.

Conclusion

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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April, 1971